

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

PROMOTE INNOVATION LLC,)

Plaintiff)

v.)

TOSHIBA CORPORATION,)

TOSHIBA AMERICA)

CONSUMER PRODUCTS, L.L.C.,)

TOSHIBA AMERICA, INC.,)

SONY CORPORATION,)

SONY ELECTRONICS INC.,)

KONINKLIJKE PHILIPS)

ELECTRONICS N.V.,)

PHILIPS ELECTRONICS NORTH)

AMERICA CORPORATION,)

MEMOREX PRODUCTS, INC.,)

IMATION CORP.,)

AUDIOVOX CORPORATION,)

LENOVO GROUP LIMITED,)

ACER INC.,)

ACER AMERICA)

CORPORATION,)

Defendants.)

Case No. 2:10-cv-100

COMPLAINT FOR FALSE
PATENT MARKING

JURY TRIAL DEMANDED

Plaintiff PROMOTE INNOVATION LLC alleges as follows:

NATURE OF THE CASE

1. This is an action for false patent marking under Section 292 of the Patent Act (35 U.S.C. § 292).

PARTIES

2. Plaintiff PROMOTE INNOVATION LLC is a Texas limited liability corporation with a principal place of business in Houston, Texas.

3. Defendant TOSHIBA CORPORATION is a Japanese corporation with a principal place of business in Japan.

4. Defendant TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C. is a New Jersey limited liability company with a principal place of business in Wayne, New Jersey.
5. Defendant TOSHIBA AMERICA, INC. is a Delaware corporation with a principal place of business in New York, New York.
6. Defendant SONY CORPORATION is a Japanese corporation with a principal place of business in Japan.
7. Defendant SONY ELECTRONICS INC. is a Delaware corporation with a principal place of business in San Diego, California.
8. Defendant KONINKLIJKE PHILIPS ELECTRONICS N.V. is a Dutch corporation with a principal place of business in the Netherlands.
9. Defendant PHILIPS ELECTRONICS NORTH AMERICA CORPORATION is a Delaware corporation with a principal place of business in Andover, Massachusetts.
10. Defendant MEMOREX PRODUCTS, INC. is a California corporation with a principal place of business in California.
11. Defendant IMATION CORP. is a Delaware corporation with a principal place of business in Oakdale, Minnesota.
12. Defendant AUDIOVOX CORPORATION is a Delaware corporation with a principal place of business in Hauppauge, New York.
13. Defendant LENOVO GROUP LIMITED is a Chinese limited company with a principal place of business in China.
14. Defendant ACER, INC. is a Taiwanese corporation with a principal place of business in Taiwan.
15. Defendant ACER AMERICA CORPORATION is a California corporation with a principal place of business in San Jose, California.

JURISDICTION AND VENUE

16. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).
17. The Court has personal jurisdiction over defendants. Defendants conduct business within the State of Texas. Defendants offer for sale, sell, marks, and/or advertise the products that are the subject of this complaint in the United States, the state of Texas, and the Eastern District of Texas.
18. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a).

FACTS

19. Defendants have marked products (for example, DVD players, Blu-Ray players, and/or laptop computers) with U.S. Patent Nos. 4,631,603; 4,577,216; 4,819,098; and 4,907,093.
20. U.S. Patent Nos. 4,631,603; 4,577,216; 4,819,098; and 4,907,093 expired on April 17, 2005, November 13, 2003, April 4, 2006, and March 6, 2007 respectively.
21. Defendants are large, sophisticated companies.
22. Defendants have, or regularly retain, sophisticated legal counsel.
23. Defendants have decades of experience applying for patents, obtaining patents, licensing patents, and/or litigating in patent infringement lawsuits.
24. Defendants know that a patent that has expired does not cover any product.

CLAIM

25. For the reasons stated in paragraphs 17 to 23 above, defendants have violated section 292 of the Patent Act by falsely marking their products with an intent to deceive the public.

PRAAYER FOR RELIEF

Plaintiff thus requests this Court, pursuant to 35 U.S.C. § 292 to do the following:

- A. Enter judgment against each defendant and in favor of plaintiff for the violations alleged in this complaint;
- B. Order each defendant to pay \$500 per false marking offense, or an alternative amount a determined by the Court, one-half of which shall be paid to the United States;
- C. Grant plaintiff such other and further relief as it may deem just and equitable.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: March 22, 2010

Respectfully submitted,

/s/ Zachariah S. Harrington

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